Administrative Office of the Courts

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Supreme Court permits state worker's whistleblower lawsuit to move forward

SANTA FE – A state employee can proceed with a whistleblower protection lawsuit against his governmental employer after deciding to arbitrate a job demotion allegedly in retaliation for his testifying about wrongdoing by state agency workers, the state Supreme Court ruled today.

The Court unanimously concluded that a collective bargaining agreement (CBA) did not preclude Frederick Garcia, who worked for what was formerly called the state Human Services Department, from separately filing a lawsuit under the Whistleblower Protection Act (WPA). The lawsuit stems from the same disciplinary action being arbitrated.

"Here, the plain meaning of the CBA does not clearly and unmistakably waive Garcia's statutory right to bring his WPA claims in district court, and require him to bring these statutory claims to arbitration," the Court wrote in an opinion by Justice Julie J. Vargas.

The Court rejected arguments by the state agency that Garcia waived his right to file the WPA complaint by agreeing to arbitrate the appeal of his demotion. The lawsuit alleged the agency had retaliated against him for testifying in a lawsuit that department employees had falsified documents. He contended his demotion also was retaliation for his testimony. The lawsuit has been on hold pending the outcome of appeals by the department and Garcia.

The WPA prohibits reprisals such as firing or demoting a public employee who discloses wrongdoing or illegality. The CBA between the governmental employer and a public employee union governs the terms of employment for workers.

The CBA governs how an employee can file a grievance for disputes involving the contract, establishes the rights and responsibilities of the worker and employer in a disciplinary action, and provides whistleblower protections.

"While the whistleblower protection provision of the CBA restates a portion of the nonnegotiable statutory protections that Garcia is entitled to under the WPA, the CBA is devoid of language explicitly requiring an employee to submit violations of the WPA to arbitration or waiving his right to bring a lawsuit for those violations," the Court wrote.

After Garcia brought his lawsuit in district court, the department tried unsuccessfully to dismiss the case. The matter went to the state Court of Appeals, which agreed with the department that the CBA precluded the WPA lawsuit stemming from his demotion. Garcia challenged the decision and the justices reversed the Court of Appeals.

In its arguments in the Supreme Court case, the department warned there could be conflicting decisions by an arbitrator and trial court if Garcia was allowed to move ahead with the WPA lawsuit and the arbitration of his demotion.

“These concerns are overstated,” the Court wrote, explaining that arbitration decisions can be admitted as evidence and taken into consideration by a court. Additionally, the justices noted that “plaintiffs proceed at their own peril when electing to advance their claims in multiple forums” because a court could decide an employee’s claim is barred by a legal doctrine that prevents re-litigating an issue that has already been decided.

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To read the decision in *Garcia v. N.M. Hum. Servs. Dep’t*, No. S-1-SC-39468, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/537208/index.do